

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

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THOMAS GESUALDI and FRANK FINKEL,
Trustees of Local 282 International Brotherhood
of Teamsters Welfare, Pension, Annuity, Job
Training and Vacation Sick Leave Trust Funds,

AMENDED SHORT ORDER
11-cv-1482 (ADS)(AKT)

Plaintiffs,

-against-

MAGNOLIA P R O TRUCKING INC. d/b/a
MAGNOLIA PRO TRUCKING INC.,

Defendant.

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APPEARANCES:

Cohen, Weiss & Simon
Attorneys for the Plaintiffs
330 W. 42nd Street, 25th Floor
New York, NY 10036

By: David Ronald Hock, Esq., Of Counsel

NO APPEARANCE:

Magnolia P R O Trucking Inc. d/b/a Magnolia PRO Trucking Inc.

SPATT, District Judge.

The Plaintiff commenced this action on or about March 25, 2011, asserting claims for damages pursuant to Section 502 of the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. § 1132, and Section 301 of the Labor Management Relations Act of 1948 (“LMRA”), 29 U.S.C. § 185. The Clerk of the Court having noted the default of the Defendant Mangnolia P R O Trucking Inc., d/b/a Magnolia PRO Trucking Inc. on May 10, 2011, and the Plaintiff having moved for a default judgment against the Defendant on March 19, 2013, the Court referred this matter to United States Magistrate Judge A. Kathleen Tomlinson for a

recommendation as to whether the motion for a default judgment should be granted, and if so, whether damages should awarded, including reasonable attorneys fees and costs.

On February 12, 2014, Judge Tomlinson issued a thorough report recommending that a default judgment be entered against the Defendant and the Plaintiffs be awarded (1) \$292,594.44 in damages for unpaid contributions and \$3,278.19 for underpaid contributions; (2) \$112,926.32 in interest on unpaid contributions; \$7,114.34 in interest on underpaid contributions, and additional interest based on the *per diem* rate of \$145.88, running from March 19, 2013 through the date of entry of judgment; (3) \$112,926.32 in liquidated damages; and (4) \$18,424.75 in attorneys' fees and costs. To date, no objection has been filed to Judge Tomlinson's Report and Recommendation.

In reviewing a report and recommendation, a court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). "To accept the report and recommendation of a magistrate, to which no timely objection has been made, a district court need only satisfy itself that there is no clear error on the face of the record." Wilds v. United Parcel Serv., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003) (citing Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). The Court has reviewed Judge Tomlinson's Report and finds it be persuasive and without any legal or factual errors. There being no objection to Judge Tomlinson's Report, the Court adopts the Report.

For the foregoing reasons, it is hereby:

ORDERED, that Judge Tomlinson's Report and Recommendation is adopted in its entirety. The Court grants the Plaintiffs' motion for a default judgment against the Defendant. The Clerk of the Court is directed to enter judgment in favor of the Plaintiffs in the amount of (1) \$292,594.44 in damages for unpaid contributions and \$3,278.19 for

underpaid contributions; (2) \$112,926.32 in interest on unpaid contributions; \$7,114.34 in interest on underpaid contributions, and additional interest based on the *per diem* rate of \$145.88, running from March 19, 2013 through the date of entry of judgment; (3) \$112,926.32 in liquidated damages; and (4) \$18,424.75 in attorneys' fees and costs.

ORDERED, that the Clerk of the Court is directed to close the case.

SO ORDERED.

Dated: Central Islip, New York
March 6, 2014

Arthur D. Spatt
ARTHUR D. SPATT
United States District Judge